

Joshua M. Sasaki, P.C., OSB No. 964182
josh.sasaki@millernash.com
Nicholas H. Pyle, OSB No. 165175
Nicholas.pyle@millernash.com
MILLER NASH GRAHAM & DUNN LLP
3400 U.S. Bancorp Tower
111 S.W. Fifth Avenue
Portland, Oregon 97204
Telephone: 503.224.5858
Facsimile: 503.224.0155

John Maston O'Neal (admitted pro hac vice)
john.oneal@quarles.com
Zachary S. Foster (admitted pro hac vice)
zachary.foster@quarles.com
QUARLES & BRADY LLP
101 E. Kennedy Blvd., Ste. 3400
Tampa, FL 33602
Telephone: 813.387.0300
Facsimile: 813.387.1800

Attorneys for Defendant ViSalus, Inc.

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CV No. 3:15-cv-01857-BR

LORI WAKEFIELD, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

VISALUS, INC., a Nevada corporation,

Defendant.

**DEFENDANT'S SUMMARY OF
WITNESS TESTIMONY**

Defendant, ViSalus, Inc. ("ViSalus") states that it may call Blake Mallen as a witness. Mr. Mallen's direct examination is expected to last 20 to 30 minutes. Any desired contact with Mr. Mallen should be addressed to Defendant's counsel.

If called, Mr. Mallen is expected to testify as follows:

Mr. Mallen will testify that he is a Co-Founder and current President of ViSalus. From March 2005 through January 2016, he was the Chief Marketing Officer of ViSalus. Mr. Mallen will testify that ViSalus is a healthy lifestyle company founded in 2005. Mr. Mallen will testify that ViSalus innovated the Body by Vi Challenge, which is a complete and healthy lifestyle program that provides the right nutrition, guidance and social support to achieve any weight loss or fitness goal using ViSalus's products. Mr. Mallen will testify that ViSalus is a network marketing company that sells weight-loss products and dietary supplements. Mr. Mallen will testify that ViSalus has relationships with independent business owners known as "promoters", who have their own businesses selling ViSalus products. Mr. Mallen will testify that ViSalus provides support to ViSalus promoters to help the promoters in their sales efforts, including training calls, meetings and informational programs. Mr. Mallen will testify that as Chief Marketing Officer of ViSalus, he oversaw ViSalus' marketing campaigns between 2005 to present. Mr. Mallen will testify that ViSalus' calling campaigns were not limited to what has been called "Press1" or ones that used "voicecasts". Mr. Mallen will testify that ViSalus used several different marketing campaigns, including calling campaigns which connected to live agents. To the best of Mr. Mallen's knowledge, ViSalus did not have robocalls with prerecorded messages for telemarketing purposes as plaintiff apparently contends. Some calling campaigns informed the promoters about training calls, training meetings, new products, specials, and incentives. Mr. Mallen will also testify that ViSalus did calling campaigns to inform customers and promoters that their credit cards were declined or expired when ViSalus attempted to process their orders. Mr. Mallen will testify that Winback campaigns and other campaigns were intended to connect a call recipient to a live person in ViSalus' call center and were not intended to feature prerecorded messages. Mr. Mallen will testify that person to person communication is needed for effective

marketing and that as a result, large calling campaigns which played messages rather than connecting live persons does not make sense as an effective marketing strategy for ViSalus.

DATED this 9th day of April, 2019.

QUARLES & BRADY LLP

By /s/ John Maston O'Neal

John Maston O'Neal (admitted pro hac vice)

john.oneal@quarles.com

Zachary S. Foster (admitted pro hac vice)

zachary.foster@quarles.com

QUARLES & BRADY LLP

101 E. Kennedy Blvd., Ste. 3400

Tampa, FL 33602

Telephone: 813.387.0300

Facsimile: 813.387.1800

MILLER NASH GRAHAM & DUNN LLP

Joshua M. Sasaki, P.C., OSB No. 964182

josh.sasaki@millernash.com

Nicholas H. Pyle, OSB No. 165175

nicholas.pyle@millernash.com

Telephone: 503.224.5858

Facsimile: 503.224.0155

Attorneys for Defendant ViSalus, Inc.

I hereby certify that I served the foregoing on Plaintiff the foregoing document:

Scott F. Kocher
Stephen J. Voorhees
FORUM LAW GROUP LLC
811 S.W. Naito Parkway, Suite 420
Portland, Oregon 97204
Telephone: 503.445.2102
Fax: 503.445.2120
E-mail: scott@forumlawgroup.com
stephen@forumlawgroup.com
Attorneys for Plaintiff

Rafey S. Balabanian (*pro hac vice*)
Eve-Lynn Rapp (*pro hac vice*)
EDELSON PC
123 Townsend Street, Suite 100
San Francisco, CA 94107
Telephone: 415.212.9300
Fax: 415.373.9435
E-mail: rbalabanian@edelson.com
erapp@edelson.com
Attorneys for Plaintiff

Stefan Coleman
Law Offices of Stefan Coleman, LLC
1309 Jericho Tpke, 2nd Floor
New Hyde Park, NY 11040
Tel: 877.333.9427
Fax: 888.498.8946
E-mail: law@stefancoleman.com
Attorneys for Plaintiff

Benjamin H. Richman (*pro hac vice*)
EDELSON PC
350 N. LaSalle Street, 14th Floor
Chicago, IL 60654
Telephone: 312.589.6370
Fax: 21.589.6378
E-mail: brichman@edelson.com
Attorneys for Plaintiff

by the following indicated method or methods on the date set forth below:

- ☒ **CM/ECF system transmission.**
- ☐ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.
- ☐ **Facsimile communication device.**
- ☐ **First-class mail, postage prepaid.**
- ☐ **Hand-delivery.**
- ☐ **Overnight courier, delivery prepaid.**

DATED this 9th day of April 2019,

/s/John Maston O'Neal

Attorneys for Defendant ViSalus, Inc.